

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Parasmal Oswal & ors. Vs. Gurucharan Singh & others

S.B.CIVIL MISC. APPEAL NO.464/1993

Against the award dated 18.08.1993
made by the Motor Accidents Claims
Tribunal, Pali in Claim Case No.2/1991

Date of Judgment : 13.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Kailash Trivedi for the appellants
Mr.R.K.Singhal for the respondent No.3 insurer

BY THE COURT:

This is a claimants' appeal against the award dated 18.08.1993 made by the Motor Accidents Claims Tribunal, Pali in Claim Case No.2/1991 seeking enhancement over the compensation amount of Rs.2,53,750/- awarded by the Tribunal on account of accidental death of Rajendra Kumar, aged 25 years, brother of appellant No.1, son of appellant No.2 and husband of appellant No.3.

Brief facts relevant for determination of the questions involved in this appeal are that on 17.09.1990 deceased Rajendra Kumar while repairing his moped in front of Rotary

Building at Pali was hit by a truck bearing registration No.PAT 8619. The truck run over the deceased who expired for the injuries sustained in the accident. The claimants pointed out the age of deceased at 25 years and his earning at about Rs.4000/- per month from his independent business. Stating losses on various heads, the claimants claimed compensation in the sum of Rs.26 lacs. The claim was put to contest by the insurer, inter alia, on the ground that deceased was trying to repair his vehicle on a busy road and the accident occurred for the negligence of deceased himself and that the truck driver as well as the deceased were not holding valid driving licence. The learned Tribunal framed the following issues for determination of the questions involved in the case:-

1- क्या दिनांक 17-9-90 को अप्रार्थी संख्या एक ने अप्रार्थी संख्या दो के नियोजन में रहते हुए अप्रार्थी संख्या दो के स्वामित्व के वाहन ट्रक संख्या पीएटी 8619 को तेज गति एवं लापरवाही से चलाकर पाली शहर सीमा में दुर्घटना कारित की। जिससे राजेन्द्रकुमार की मृत्यु हुई।
---- प्रार्थीगण।

2- क्या मृतक राजेन्द्रकुमार की आयु मृत्यु के समय 25 साल थी तथा प्रार्थीगण राजेन्द्रकुमार की मृत्यु की क्षतिपूर्ति के रुपये 2600000-00 अक्षरे छब्बीस लाख रुपये अथवा अन्य कोई राशि प्राप्त करने के अधिकारी है।
-----प्रार्थीगण

3- क्या मृतक व्यस्त मार्ग सड़क पर विककी ठीक कर रहा था जिससे मृतक की लापरवाही से दुर्घटना हुई है। ऐसी अवर क्षतिपूर्ति की जिम्मेदारी अप्रार्थी संख्या तीन की नहीं है।
----अप्रार्थी संख्या तीन।

4- क्या अप्रार्थी संख्या एक एवं मृतक राजेन्द्र के पास चालक लाईसेन्स नहीं है।

----अप्रार्थी संख्या तीन।

5- अनुतोष ।

Parasmal, claimant No.1 was examined in oral evidence on behalf of the claimants who also produced relevant documentary evidence including income-tax returns filed by the deceased Rajendra Ex.12 and Ex.13. No evidence was led by the non-applicants.

On issue No.1 after consideration of the material available on record including site inspection report, learned Judge of the Tribunal came to the conclusion that the accident occurred for rash and negligent driving of the truck by its driver that resulted in the death of Rajendra Kumar. Taking up quantification of compensation, the learned Judge found from the income tax return and the income tax assessment order of the deceased that his annual income was Rs.45,280/-. Learned Judge observed that the wife of deceased had been widowed within 5-6 months of marriage and, therefore, she was entitled to Rs.25,000/- towards loss of consortium and love and affection as well. It was, however, observed further that wife of the deceased had remarried two years after his death and, therefore, she was entitled to

compensation of Rs.60,000/- towards loss for two years at the rate of Rs.30,000/- per annum and in this manner wife of the deceased has been held entitled for compensation to the tune of Rs.85,000/-. So far mother of the deceased is concerned, the learned Judge took into consideration the facts and factors that she was 55 years of age and was dependent on his other son Parasmal who had admitted that he was managing the factory left by the deceased Rajendra and, therefore, the income from the factory was intact but the deceased would have served the mother and would have contributed about $\frac{1}{4}$ th of income to the mother for next 15 years. In this manner, the learned Judge has adopted a multiplicand of Rs.11,250/- ($\frac{1}{4}$ th of Rs.45,000/-) and applied a multiplier of 15 to arrive at a figure of Rs.1,68,750/- to be awarded as compensation to the mother of the deceased. So far brother of the deceased is concerned, learned Judge was of opinion that he was major and was not dependent on his brother and, therefore, not entitled for any compensation. The Tribunal has, therefore, awarded a total compensation of Rs.2,53,750/- (Rs.85,000 + Rs.1,68,750/-) and has also awarded interest at the rate of 12% per annum.

Learned counsel Mr.Trivedi appearing for the claimants has assailed the award on its quantification of compensation

and has referred to the decision of this Court in *Vimla Devi and others Vs. Chaman and others*: 1992 ACJ 1048 to submit that compensation amount is not required to be reduced on account of remarriage or prospects of remarriage of the widow of the victim. Learned counsel Mr. Singhal appearing for the insurer has strenuously opposed and submitted that ultimate award made in favour of claimants stands on rather higher side where a multiplier of 15 has been adopted for the mother and higher amount towards contribution has been taken in relation to both these claimants and even higher amount towards loss of consortium has been awarded to the wife of the deceased.

Having heard learned counsel for the parties and having perused the record, this Court is clearly of opinion that the impugned award on its quantification of compensation remains too low and deserves suitable upward revision and the appeal to that extent deserves to be allowed.

The Tribunal has taken annual income of the deceased at Rs.45,000/- on the basis of income tax return filed in the year 1989, that is about a year before the death of the victim. He was earning from an industry established by him and, therefore, adopting a figure of Rs.45,000/- per annum

towards income of the deceased cannot be said to be an estimation on higher side; rather that remains the bare minimum in view of the age of deceased at 25 years, who had all chances of future growth in income. However, learned Judge of the Tribunal has seriously erred in assessing the loss in relation to the widow of deceased and so also in relation to the mother of deceased.

It has been adopted as an abstract principle by the learned Judge that when the widow had married after two years of death of victim she would be entitled for compensation for two years only and then, pecuniary loss has been calculated qua her by taking multiplicand at Rs.30,000/- per annum, i.e. $\frac{2}{3}$ rd of the estimated income of the deceased and multiplying by 2. Thereafter, a multiplier of 15 has been applied for the mother to the multiplicand at $\frac{1}{4}$ th income of the deceased for her purposes. Such calculation is not based on correct principles.

There appears to be no justification for depriving the claimants of just compensation on account of loss of dependency as well as loss of contribution and loss of estate. The fact that widow had remarried after two years of the death of victim cannot be applied in the manner that compensation

towards her would be restricted only for those two years of widowhood. The decision of this Court in Vimla Devi (supra) was cited before the learned Judge of the Tribunal wherein this Court has observed that no deduction in compensation can be made on account of remarriage by widow and has made observations even to the extent that an incentive should be given for remarriage for preservation of better society. It has been pointed out that after remarriage generally a woman does not get the same status and benefits of decent life as she used to get earlier and that public feeling requires that there shall not be any deduction on account of possibility of remarriage. It has been entirely unjustified on the part of the learned Judge of the Tribunal to have not even looked inside the said citation.

This Court is clearly of opinion that even when the widow has remarried, the compensation amount in a fatal accident claims case cannot be restricted to the period of widowhood only with reference to the factum of remarriage.

Learned Judge of the Tribunal was not justified in awarding compensation to the widow only for two years; but then adopting a figure of Rs.30,000/- per annum ($\frac{2}{3}$ rd of the estimated income of the deceased) for these two years is also

not justified because the deceased had apart from the wife, his mother also in the family. Further, for the purposes of the mother, adopting a figure of Rs.11,250/- also does not seem to be justified being too low and inappropriate representing only $\frac{1}{4}^{\text{th}}$ of the income of the deceased and at the same time application of multiplier of 15 in view of her age at 55 years is also not justified being on much higher side. The widow has been awarded Rs.25,000/- towards loss of consortium and strangely the mother has not been awarded anything towards non-pecuniary compensation. The Tribunal was of course correct in denying compensation to the brother of the deceased inasmuch as he had been shown to be major and independent. The factor that income from the industry established by the deceased was available to the claimants could of course have been considered for the purpose of arriving at a reasonable figure of multiplicand but the method of calculation adopted by the Tribunal on all scores remains absolutely shaky and rather inexplicable. In this view of the matter, the award on its quantification of compensation deserves suitable modification.

Having regard to the facts and circumstances of this case where the victim has died at the age of 25 years and was already having an income in the range of Rs.45,000/- per

annum; has left behind mother and wife; has also left industrial establishment yielding income; and the wife had remarried after two years and the mother was 55 years of age, taking cumulative effect of all these facts and factors, this Court is of opinion that the figure of just compensation in the present case could be arrived at thus: The deceased at 25 years has been shown to be earning Rs.45,000/- per annum in the industry and, therefore, a reasonable component towards likely future growth deserves to be provided particularly in view of very young age of the deceased at 25 years. Even if a growth factor at 1.5 times the last earning is provided, the average annual income stands at Rs.67,500/- and if 1/3rd be deducted for the personal expenditure of the deceased, the average annual contribution stands at Rs.45,000/- per annum. Now, in view of the fact that the business establishment and assets are nevertheless available, a deduction of further 1/3rd could be made for arriving at a multiplicand of Rs.30,000/- per annum. In the overall circumstances of the case, it appears appropriate to apply a multiplier of 10 only. Therefore, the pecuniary loss figure stands at Rs.3,00,000/- (Rs.30,000/- x 10) that appears to be minimum loss sustained by the claimants. The wife of deceased deserves to be allowed consortium to the tune of Rs.20,000/- in view of her having been widowed within 5-6 months of her marriage at a very

young age. Similarly, mother of the deceased having lost her 25 years old son deserves to be allowed non-pecuniary compensation at Rs.10,000/-. Having regard to the facts and circumstances of the case, this Court is of opinion that Rs.5000/- deserves to be awarded towards funeral expenses. In this view of the matter, the claimants are entitled for an amount of Rs.3,35,000/- (Rs.3,00,000 + Rs.20,000 + Rs.10,000 + Rs.5,000 = Rs.3,35,000) and the award made in favour of the appellants for Rs.2,53,750/- deserves to be modified and the appellant Nos.2 and 3 deserve to be awarded further amount of Rs.81,250/-. In view of the quantum of enhancement, it appears appropriate that interest be allowed at the rate of 7.5% per annum on the enhanced amount from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed; the impugned award dated 18.08.1993 is modified and further award in the sum of Rs.81,250/- is made in favour of the appellant Nos.2 and 3. The amount payable under this modified award shall be deposited by the respondent No.3 insurer within thirty days from today with the Tribunal and upon deposit, the Tribunal shall carry out apportionment of the award amount between appellant No.2 and appellant No.3 (mother and wife of the deceased) and

having regard to the circumstances of the case, it appears appropriate that the ratio maintained by the Tribunal be not disturbed wherein the award amount has been distributed in the ratio of about 2:1 between these two claimants. The amount be distributed in the same proportion between these claimants and half of the amount so payable may be paid cash to the respective claimants and remaining be invested in a Monthly Income Scheme of the Post Office for a minimum period of five years and the appellants shall be entitled to receive periodical interest thereupon. The parties shall bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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